IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.S.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE K.THANKAPPAN

FRIDAY, THE 28TH SEPTEMBER 2007 / 6TH ASWINA 1929

RP.No. 29 of 2005()

AGAINST THE ORDER IN AS.656/1993 Dated 05/11/2004
OS.286/1991 of ADDL.SUB COURT, PALAKKAD
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REVIEW PETITIONER/APPELLANT:

K.S.RAMACHANDRAN, S/O.SEETHARAMA IYER,
KUNISSERY, ALATHUR TALUK, PALAKKAD DISTRICT.

BY ADV. SRI.P.N.KRISHNANKUTTY ACHAN(SR.)
SRI.K.MOHANAKANNAN

RESPONDENTS: RESPONDENTS:
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1. K.S.ANANDARAMAN, S/O.SEETHARAMA IYER,
KUNISSERY, ALATHUR TALUK, PALAKKAD DISTRICT.

2. THE ASSISTANT EDUCATIONAL OFFICER,
ALATHUR, PALAKKAD DISTRICT.

3. THE DEPUTY DIRECTOR OF EDUCATION,
PALAKKAD.

BY ADV. SRI.T.R.RAMAN PILLAI(SR.)
SRI.V.G.ARUN
GOVERNMENT PLEADER SRI.BASANT BALAJI

THIS REVIEW PETITION HAVING BEEN FINALLY HEARD ON 28/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.S. RADHAKRISHNAN & K. THANKAPPAN, JJ.

R.P.NO.29 OF 2005

in

A.S.NO.656 OF 1993-C

Dated this the 28th day of September, 2007.

O R D E R

Radhakrishnan, J:

The review petition has been preferred by the appellant stating that this Court has omitted to examine the partiability of schedule C and D properties. Reference was made to the decision reported in **Mammunhi v. Kunhibi** (AIR 1961 Kerala 147) and submitted that whatever is affixed to the soil belong to the soil. The counsel also points out that the buildings in the C schedule shown in the written statement were constructed with the funds advanced by the father and therefore, liable to be divided among the sharers. These questions were elaborately considered by the trial court in paragraphs 14 to 16 of its judgment.

2. It has been clearly found that from the year 1971 onwards the 1st defendant is residing in the D schedule property. No material was produced before us or the trial court to show that the buildings were constructed in the D schedule property with the

funds advanced by the father or the 1st defendant. Admittedly, the C schedule building was constructed in the property which belongs to the plaintiff. The evidence adduced by DW1 and the argument put forward by the learned counsel for the defendant is also to the effect that the building was constructed with the funds advanced by the father, for which no evidence has been adduced. The mere fact that the tax was paid in the name of the father few years that by itself would not show that the building was constructed by the father or by the funds advanced by him. The burden is entirely on the part of the defendant to establish.

Under these circumstances, we find no reason to disturb the findings entered by the trial court. Hence, we are not inclined to entertain this review petition. Accordingly, the review petition is dismissed.

K.S RADHKARISHNAN JUDGE,

K. THANKAPPAN, JUDGE.

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